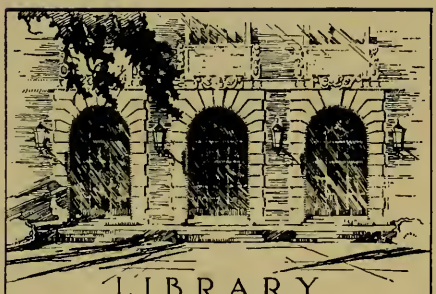

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UNIVERSITY REPRESENTATION.

BY

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UNIVERSITY REPRESENTATION.

AMONG the thorny subjects which await the attention of Parliament, whenever it may be able and willing to give serious attention to domestic legislation, the system of Parliamentary representation stands chief. An extension of the franchise is simple and comparatively easy, but in the redistribution of seats which will necessarily follow, difficult and unsettled questions of principle will arise. Before adopting any system of distribution more logical or uniform than the present, it must be decided whether any share in the representation of each constituency should be given to minorities, and whether there are any qualifications, either of property or education, which ought to entitle their owners to a plurality of votes. Upon these questions profound difference of opinion obtains. Orthodox Liberalism is severe, even procrustean, in the simplicity of its theory of representation. An extended franchise, equal constituencies, and freely chosen candidates are all its requirements. But on the other side are ranked not only Conservatives and timid Liberals, but ardent Radicals such as John Stuart Mill.

The latter in especial, pointed out most strongly the danger that with an extended suffrage all power might fall into the hands of a single class, and that the earners of wages might wholly exclude the minorities of rich and educated persons from any share in the representation. Though keenly alive to the claims of minorities, he supported the widest extension of the suffrage, and deprecated special representation of property. He advocated, however, the bestowing of additional votes on those who

satisfied standards of education or intelligence, but as a safeguard against the danger, mainly relied on the adoption of some system of elections by which minorities should obtain representation in proportion to their size. Most people would be content to point out in reply the difficulties in the way of such a scheme, but there is one special class of constituencies where Mill's views could easily be reduced to practice.

These questions of principle arise in an isolated and simple form in connection with the University constituencies. At these alone is the right of voting given on the ground of any peculiar personal fitness in the voter. These, as will afterwards appear, would form the best possible subject for an attempt to introduce a scientific method of voting, which should give a proper proportional representation to all opinions. Their representation is a curious anomaly in the existing system, and forms an interesting memorial of the constructive statesmanship of James I.

About the early history of University elections there is much interest, especially in the case of Cambridge, which the present writer has chiefly in view. The subject has, moreover, present claims to attention, as being one of the many minor matters upon which the law is in a state of confusion, and where legislative intervention is much needed to introduce changes both formal and real.

The Universities entitled to be represented in Parliament are those of Oxford, Cambridge, and London; Trinity College, Dublin; and the four Scotch Universities, Glasgow, Aberdeen, St. Andrews, and Edinburgh. Oxford and Cambridge have, since the year 1604 (with a short interval of irregularity during the Commonwealth), returned two members. Dublin, from the year 1613 to the Union, returned two members to the Irish Parliament. From the Union till 1832, it returned one member to the Parliament of the United Kingdom. In 1832 its franchise, till

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that time very narrow, was extended so as to correspond with that of the other Universities, and it received a second member. The representation of the other Universities is of recent date. London, after repeated promises, was given a member by the Representation of the People Act, 1867. By the corresponding Act for Scotland in the following year, St. Andrews was linked with Edinburgh and Aberdeen with Glasgow, and a member given to each pair of Universities.

Before the year 1604 there was one isolated occasion when Oxford and Cambridge were called on to send representatives to Parliament. In the year 1300, Edward I. summoned Parliament to meet at Lincoln to discuss his rights to the crown of Scotland. The question of law being difficult, he called on the Universities to furnish him with men learned in the Civil Law to assist in its discussion. The terms of his letter to Oxford are as follows* :—" Rex dilectis sibi in Christo Cancellario et Universitati Oxoniæ salutem. Quia super jure et dominio quæ nobis in regno Scotiæ competit, et quæ antecessores nostri reges Angliæ in eodem regno Scotiæ habuerunt temporibus retroactis, cum jurisperitis et aliis de concilio nostro speciale colloquium habere volumus et tractatum. Vobis mandamus firmiter injungentes quod quatuor vel quinque de discretioribus et in jure scripto magis expertis Universitatis prædictæ ad Parliamentum nostrum apud Lincoln. mittatis." To Cambridge he wrote in similar terms, but from that University, to the great delight of Prynne, and other zealous defenders of the fame of Oxford, he only demanded two or three of their members. In reply to these writs Cambridge returned Simon de Waldene, a monk, and Hugh Sampson, who are described as "jurisperiti, providi veri, et

* Ayliffe's "Ancient and Present State of the University of Oxford.' Vol. 2. App. lxxxviii. Also in Prynne's " Parliamentary Writs," pt. 1, p. 345. Prynne on " Coke's Fourth Institute," p. 373. 1 Peckwell, " Election Cases,' 51.

discreti magistri." Oxford sent four persons, with a humble request to the King to return them in safety when their business was finished. Their names are unknown, but they were reputed to be " scientia juris præditi et moribus venustati regisque honoris et famæ fervidi zelatores."

This occasion was too early in the history of parliaments to establish a precedent. Either the need of learned men was not again felt, or the result of the experiment did not encourage the King to repeat it.

In later times the Universities became anxious in their own interest for the privilege of returning representatives, and during the reign of Elizabeth repeated applications were made both by Oxford and Cambridge. These attempts were unsuccessful, but upon the accession of James, the Universities attained their desire.

That learned monarch was deeply interested in the Universities, and much given to interfering in their affairs. Curiously enough, he happened during the first few months of his reign to become personally acquainted with the authorities of each. On his first progress southwards, " moving by many small journeys and great feastings," he was magnificently entertained at Hinchinbrooke, near Huntingdon, by Oliver Cromwell (the uncle of the Protector) and received the Heads of the University of Cambridge in their scarlet gowns and corner caps. He was highly affected by a learned Latin speech from the Orator, and willingly granted to the Heads a confirmation of their privileges.

Thence he passed on to London, but immediately after his Coronation he was driven into the country by the plague. Amongst other places he was some time at Woodstock, where he was visited by the Vice-Chancellor of the University of Oxford, and such of the Doctors and Fellows as could, notwithstanding the plague (which was very severe in Oxford), be collected.

This personal acquaintance with both Universities no doubt predisposed the King to grant their request for members, which was soon urged on him by the two Chancellors, Thomas Sackville, newly created Earl of Dorset, and Sir Robert Cecil, afterwards Earl of Salisbury. There was considerable opposition, we are told, in Parliamentary circles, but Sir Edward Coke, then Attorney-General, carried the matter through.*

The two charters are similar in terms. That of Oxford bears date the 12th March, 1603-4, Parliament having been summoned for the 19th March. It is a very verbose document,† but the important recitals are as follows :—

"Opere precium et necessarium videtur quod dicta Universitas [Oxoniæ] in qua omnes scienciæ tam divinæ quam humanæ, omnesque adeo artes liberales cultæ et professæ sunt (eadem universitate multitudine virorum pietate sapientia doctrina et integritate preditorum abundante) pro communi bono cum totius reipublicæ tum universitatis prædictæ et cujuslibet prædictorum collegiorum aularum et hospitiorum habeant Burgenses Parliamenti de seipsis qui de tempore in tempus supremæ illi curiæ Parliamenti notum facient verum statum ejusdem universitatis et cujuslibet collegii aulae et hospitii ibidem ; ita ut nulla statuta aut actus generalis illis aut eorum alicui privatim sine justa et debita notitia et informatione in ea parte habita præjudicet aut noceat."

In accordance with these charters Cambridge returned

* Wood, History and Antiquities of Oxford. Vol. IV., 188.

† Printed in 1 Peckwell, "Election Cases," p. 48. The Cambridge charter is similar. It is given in a shortened form by Dyer, "Privileges of the University of Cambridge," Vol. I., p. 135. An English translation is given by Heywood, in his "Collection of the Statutes of the University and Colleges of Cambridge," p. 355.

The Dublin charter refers to those of Oxford and Cambridge and is based on similar grounds. Part of it is quoted in the Calendar and the main part is printed by Peckwell, Vol. I., p. 27.

Henry Mowtlow, the Public Orator, and Nicholas Steward (who each received 5s. a day for their expenses). Oxford sent Sir Daniel Dunne, and Sir Thomas Crompton. All four were of the degree of Doctor in the Faculty of Law, at that time the mark of considerable attainments in Law. Neither was this an accident. The charters do not, like the writ of Edward I., expressly demand the qualification, but while they lay chief stress on the advantage to special University interests, they recite the peculiar gain to the nation at large in the representation of so virtuous and learned a body of men, and much stress was at first and for some time laid on the requirement stated by Wood that the representatives should be "grave and learned men professing the civil law."

The charters do not define the constituency or regulate the manner of election. These matters have been in the main left in the discretion of the Universities.

At first sight it may appear otherwise. The charters empower "the Chancellor, Masters, and Scholars of the University" to elect Burgesses. But it was never contended that the Constituency was thus denoted. It was considered, apparently without discussion, that this phrase was used as being the corporate name of the University, and that beyond this no special meaning attached to it. In each University the Sovereign body—at Oxford, the House of Convocation, and at Cambridge, the Senate—assumed, unquestioned, the right of election.

At Dublin matters took an entirely different course. That University received its charter from the same King on 12th May, 1613. By this charter, which refers to and resembles those of Oxford and Cambridge, the right of electing two members was conferred on the "Provost, Fellows and Scholars of Trinity College." But though the intention was apparently to follow the precedent of the language of the English charters, the result was

altogether different. The phrase used is not the corporate name of the University of Dublin. It was therefore given full significance, and held to point out the persons qualified to vote. Consequently, the Constituency was limited to the Provost, the Fellows for the time being, and such of the Scholars as had attained the age of twenty-one.

This small body continued to possess the exclusive right of voting until, by the Irish Reform Act of 1832, the franchise was extended to all graduates whose names were on the books of the University.

At Oxford and Cambridge the exclusive rights of Convocation and the Senate do not appear ever to have been questioned but these rights are nowhere expressly conferred. At Oxford they are incidentally recognized by the statutes of 1636,* and saved, along with other rights, by the Oxford Act of 1854.

At Cambridge, the title of the Senate appears to be of a purely customary nature. No Act of Parliament, no Letters Patent, not even a University statute declares it.

These bodies do not include anything approaching to the whole body of graduates. There are many persons, both graduates and undergraduates, included within the terms of the charter, but who have always been excluded from the franchise. In the first place, by University statute, no graduate is entitled to vote in the Senate who has ceased to pay the annual University dues. Even the full payment of arrears does not entitle a person to vote until after the lapse of 180 days. In addition there was, till 1871, a religious test. At Oxford the degree of M.A. could not

* Of the Elections which are to be holden in the House of Convocation :— "Except in the case of the election of the Burgesses in Parliament (which the Parliamentary Commissioners have directed must be made by word of mouth or by dividing the house on the occasion of any question arising in the matter) every election to offices and public lectureships shall be by scrutiny in writing, in which the proctors are to be scrutineers under the presidency of the Vice-Chaneellor."—Statutes of Oxford, 1636. Ward's edition, p. 141.

be attained without subscription, but at Cambridge, where there was no religious test for the degree of M.A., only those who declared themselves members of the Church of England were qualified for the Senate. Besides the graduates thus disqualified, there is another unenfranchised class of some importance. For generations, the age of entering the University has been such that there have been many scholars of 21. No member of any of these classes appears to have asserted his claim to vote. No attempt seems ever to have been made to enforce the letter of the charter.

There has been more dispute over the manner in which the election should be conducted. At Cambridge, a bold but unsuccessful attempt was once made by the Heads of Colleges to get the election into their own hands. The Elizabethan Statutes of 1570 had not long before been forced upon the University by Whitgift, and the conflicts arising out of this action had by no means come to an end. The main purpose of these statutes was to transfer power from the Regents, the general body of teachers, into the hands of smaller bodies, the Heads of Colleges and the *Caput Senatus*. By them the Heads of Colleges were constituted a distinct and separate estate in the government of the University, and, amongst other powers, they were given control over the election of the Vice-Chancellor and certain other officers.

The actual elections to these offices remained as before in the hands of the Senate, but that body was limited in its choice to one of two persons nominated on the preceding day by the Heads. The statutes, being made before the grant of representatives, contained no provision for their election, but there was a statute intended only to apply to subordinate officials, by which those as to whom no other provision had been made should be elected in the

same manner as the Vice-Chancellor, or, as it is usually called, by nomination.

Using a power of interpretation given by another of these statutes to the Chancellor and the Heads of Colleges in doubtful or ambiguous matters, the Heads attempted to include the Parliamentary representatives amongst the unspecified offices governed by the supplementary statute. In 1613, when the election to the second Parliament of James was in immediate prospect, they declared by a formal "Interpretation," which has since stood appended to the statutes, that the Burgesses should be elected by the method of nomination.* This Interpretation was duly ratified by the King,† presumably before the general election of the spring of 1614.

Nevertheless, both Interpretation and Ratification appear to have been from the first a dead letter.

At the election which immediately ensued, and of which we happen to have a very full account, the method of free voting was that used, and no suggestion appears to have been made of any other.

In later times, there were fierce struggles between the rival methods of election in the case of several of the professorships, but no claim to a right of nomination of Burgesses appears to have been set up by the Heads.

So clear was this point held that the manner of election by a free vote of the Senate has always been called the election *more burgensium*, as opposed to an election by nomination.

This case is no isolated example of the way in which the Elizabethan statutes were treated. They were forced upon the University against its will. They were vehemently resisted at the time of their first promulgation, and their subsequent administration was very irregular.‡

* Dyer, I., 292. † MS. in Registry at Cambridge.

‡ Peacock, "Observations on the Statutes of the University of Cambridge," 1841, p. 53, *seq*.

Many of their most essential provisions were from the first neglected or violated. Nevertheless they continued to govern the University until modern times, when after much opposition they were superseded by the Commission of 1856.

The second Parliament of James was summoned for the 5th April, 1614. There exists, as has been remarked, a very full and graphic account of the election at Cambridge.

It was written by Dr. Duport, Master of Jesus College,* who acted as deputy Vice-Chancellor, the actual Vice-Chancellor being one of the candidates, and is a statement of the part he took, as returning officer, in the highly irregular proceedings of the election. The candidates were Sir Francis Bacon, at that time Attorney-General, and one of the counsel for the University; Sir Miles Sandys, Dr. Corbett, and Dr. Goche, the Master of Magdalen, and at that time Vice-Chancellor. The last-named represented the University in subsequent Parliaments, and according to some accounts had been chosen during the last Parliament to fill the place of Nicholas Steward.

No opposition was made to Bacon's return, the whole contest was between Sandys and Goche. Nothing appears of the questions at issue between them. On the one side the influence of the Chancellor appears to have been the active motive; on the other the power of the Vice-Chancellor and jealousy of non-residents. The former feeling seems to have been the most powerful with the majority of the electors. The necessity of residence is that put forward by Dr. Duport. Neither Sandys nor Bacon were residents, but Bacon, he argued, being Counsel to the Uni-

* Communicated by Mr Aldis Wright to the Cambridge Antiquarian Society, and published in their Communications, Vol. III., p. 203. It had previously been communicated by Dr. Corrie, Master of Jesus, by whom it was doubtless found amongst the papers in his charge. On that occasion it was not printed.

versity, "might seem after a sort to live and breathe amongst them." On the other hand, it was alleged that there had been letters recived from one of the Chancellor's secretaries that his Lordship was desirous Sir Miles Sandys might be one of the Burgesses for the University, if it might be by law. The Vice-Chancellor indignantly replied that he had his Lordship's own letters, and was not to take knowledge of his Lordship's pleasure from any private man. The election was held on the 2nd of April at eight o'clock in the morning. The electors having been called together in the Regent house, the meeting began with a speech from the Vice-Chancellor, enlarging on the qualification of residence, demanded by the terms of the charter and the writ and by statute (*i.e.*, 23 Henry VI., c. 14, and other earlier statutes), and full of earnest exhortations that "like University men, that is, like men of learning, wisdom, and government, they would peaceably and quietly transact all things," that is to say, would transact them in the way Dr. Duport desired.

He had written to the Chancellor for directions how to proceed, and had been advised by him in the first place to follow the express words of the charter and the writ; and in the second place, as near as might be, to choose the Burgesses after the form of the choice of the Chancellor—that is to say, by the method of open voting. This view met with no opposition, and no further question as to the proper manner of election is in any way suggested.

The charter, the writ, and the Chancellor's letters were then read by the Senior Proctor, and the House proceeded to the election by giving their votes in writing.

Before this began, the Vice-Chancellor, "perceiving the congregation to begin to be very troublesome, and being afraid that it would prove so mutinous and violent in the end that he should not be able to pronounce the election as he would," made a bold attempt to decide the question at

issue by declaring any election which neglected the requirements of the statutes to be void.

Nevertheless, a large majority of the votes were given for Bacon and Sandys, Goche having 74, and Corbett 64. Hereupon, a scene of considerable excitement ensued. Dr. Dup ort candidly states that he had meant to put the votes for Sandys in his pocket, but finding that the congregation grew hot and pressed hard upon him, he feared violence if he carried out his intention. Accordingly he did not wait till the counting of the votes was finished, but declared Bacon and Goche to be elected, dissolved the congregation, and departed. His opponents, however, were equal to the occasion. They took by force from the Register the votes for Bacon and Sandys. With much foresight they had previously secured the Sheriff, and provided him with a bond of indemnity from Sandys. They had him waiting close at hand, in King's, ready to certify to the return of Bacon and Sandys. This was forthwith done, and the Vice-Chancellor left to make his version of the return as best he could without the Sheriff.

The illegality of the whole proceeding is startling. As to the question of law involved, the University authorities were clearly in the wrong in endeavouring to enforce the old statutes, which made residence within the constituency a necessary qualification for every knight of the shire and burgess. These were already obsolete. In 1620 the returning officer of Leicestershire was severely reprimanded for acting upon them. Nevertheless, as to the sequel, authorities differ. The University does not seem to have recognised Sandys as its member. There exists in the Registry the copy of the return of Bacon and Goche, and no mention of Sandys is found in the records. But shortly afterwards we find that a new writ issued for Shaftesbury in place of Sir Miles Sandys, who had chosen to sit for the University of Cambridge. It is therefore to be concluded that the House of Commons did not regard with favour the

attempt of the Vice-Chancellor to revive in his own favour so obsolete a statute.

In subsequent times there were no such bold attempts at interference with the free expression of the will of the University, but the materials of strife are ready to the hand of any perverse or interested Vice-Chancellor. If it occurred to him to examine the law which governs him, and if, instead of quietly accepting precedents, he inquired into the sanction of the various customs, trouble would begin. He would of course feel no doubt as to the cogency of general common law principles, such as that forbidding peers to take any part in any election. But he would discover that the statutes which govern the subject are in a condition of chaos. For some points in the customary procedure he would find no authority but usage and the analogy of other University proceedings: others he would find to depend upon statutes originally enacted without thought of the special case of the Universities or on statutes in general repealed, but possibly with life left in them for this particular purpose. To give an instance of this imperfection and complexity, at Oxford and Cambridge there appears to be no limit of time fixed within which the Vice-Chancellor must proceed to election after the receipt of the writ from the Petty Bag Office. It is carefully provided by one Act that he must give notice of the election at the usual place, and within certain hours of the day, but the Act which formerly limited the number of days within which the notice must be given has been repealed by a later Act, which, according to high authority, did not include the Universities, and in any case has itself been subsequently repealed by the Ballot Act in a manner that raises the question whether the repeal does or does not affect the Universities.

In the University of London also, though a recently created Constituency, the law is equally unsatisfactory. By

the Representation of the People Act, 1867, the procedure is only partially defined, and the University is referred for the remainder to the general law. The general law has been wholly changed by the Ballot Act, which specially saves all Universities from its operations. The University of London, therefore, as it has no ancient customs to depend on, is the single Constituency in which the general law previous to 1872, or such part of it as fits the case of a University, remains in force. Even here, the difficulty does not end. The Ballot Act, while by a special clause saving the Universities from its operation, repeals by a schedule many of the Acts which formerly governed election procedure. Of these some are repealed except so far as they relate to Universities, others, which equally affect Universities, are repealed in terms absolutely. The question remains, whether the saving clause of the Act would be of sufficient force to keep alive these latter Acts for the purposes of University elections, or whether the terms of the schedule prevail, in which case upon many points there exists no legislative provision.

At the Scotch Universities alone is the law in a satisfactory condition. In the original Act of 1868, their position was more carefully defined than that of London. This, however, was not enough, but they succeeded in 1881 in obtaining, without debate in either House, an Act based on the experience of several closely contested elections, and which amended their procedure in all necessary points.

Such matters as those hitherto referred to are outside the knowledge of the constituents in general. They perplex and trouble a few officials, but the ordinary voter is content to accept the procedure laid down for him without entering into questions of its strict accuracy.

There is, however, one branch of the procedure in which every voter is concerned, and that is the manner of delivering his vote. At the English Universities there are two

ways of voting, both peculiar to those constituencies. A vote may be given either by a signed voting-paper, delivered by a person nominated in it, or by an open written personal vote. The method of voting in person is, at Cambridge, that used in ordinary elections in the Senate. It is old and very simple. The voter writes on a card his own name, and that of the person he votes for, and hands it in to the Vice-Chancellor who reads it aloud, and puts it into a box. The method of voting by voting-paper is new, special and complex.

In former times the number of voters was small. There were five contested elections for Cambridge between 1780 and 1807, in which the numbers voting increased from 546 to 631. In the six contested elections between 1811 and 1831 they increased from 796 to about 1,400. It was found that non-residents were brought up in great numbers, to their own inconvenience, or at the expense of the candidate. To avoid these evils, a Bill was introduced by Mr. Dodson, in 1861, to enable persons to vote by means of voting-papers. The measure, while accepted as a piece of experimental legislation, was regarded with grave suspicion by the Legislature, and hedged round with precautions. As often happens, the dangers provided against have never been felt, and it is the safeguards which have caused inconvenience. Personation was greatly feared. By the original scheme of the Bill, the voter was to send his signed voting-paper by post to the Vice-Chancellor. For this was substituted a provision that the paper must be presented at the poll by someone able to declare himself personally acquainted with the voter. On the same grounds, the attestation of a Justice of the Peace for the county or borough in which the voter resides, who was willing to declare himself personally acquainted with the voter, was made necessary.

It was also feared that Tutors, and other residents, would obtain an undue amount of power by inducing non-residents

to sign alternative papers in favour of more than one candidate. They would then, at the election, produce whichever paper best suited themselves. No previous nomination of candidates being necessary, a door would be opened for the deepest intrigues. The Master of Trinity, it was urged, by obtaining hundreds of proxies, would be enabled to put unheard-of pressure upon the candidates, or even, at the last moment, to secure the election of someone till then unthought of.

To meet these fears, it was provided that no person should sign a blank proxy, or should sign more than one voting-paper. The only loophole intended to be left for a person who spoiled a voting-paper, or changed his mind, was that he should forestall his voting-paper by appearing and voting in person.

It is hardly necessary to say how little grounded these fears have proved. The declaration as to personal acquaintance, on the part of the person presenting the vote, was found so inconvenient, and to lead to such lax views as to what constitutes personal knowledge, that it was repealed in 1868, after a few years experience.

In the case of the Scotch Universities, the whole set of precautions has been swept away by the Act of 1881.

In University elections no one is afraid of fraud, and the precautions against it are looked upon as vexatious formalities. In spite of the express words of the declaration, no one who has spoiled one voting-paper hesitates to fill up a second. The definition of residence adopted is that best calculated to fit the jurisdiction of the most attainable magistrate. Personal acquaintance with the magistrate consists of introduction of the voter to him in a committee-room by someone previously unknown to either party, and of a short conversation, during the process of signing, generally consisting of complaints of the complexity of the form. But no one doubts the authenticity

of any voting-paper which is handed in, and the minute requirements of the Act become pitfalls to catch a certain proportion of unwary voters.

At the recent Cambridge election, in order to save trouble and to prevent votes being rejected for frivolous reasons, a convention was made between the parties that neither side should take objection to any vote upon certain specified grounds. For instance, it is provided by the Act that the attesting Justice shall sign the paper with his name and address in full. If he do not, the paper is void as being contrary to the provisions of the Act. It was solemnly agreed between the parties that neither side should take objection to a vote on the ground that the Justice had signed it with the initials only of his Christian names. It was further agreed that the requirements of the Act, in respect of the Justice's address should not be rigidly enforced, but that if an objection were taken on the ground that the Justice had not stated his address in full, it should be left to the discretion of the Returning Officer to decide whether a letter so addressed would find him. This gives an example of the intricacies of the Act. The convention takes a common-sense view of the meaning of the Act, but one which certainly is not in accordance with its terms. It is not easy to define the precise meaning of "full address," but the necessary degree of exactness can hardly be supposed to vary inversely with the notoriety of the individual.

Various points of equal importance were the subject of similar agreement, but ample scope was left for the efforts of the objectors. Enthusiastic barristers went down from London to attend the polling, and other volunteers were impressed on the spot to assist each side. Every defective paper was challenged when tendered, and forthwith discussed with the greatest energy and enjoyment. No question arose as to any of the personal voters,

but scores of voting papers were rejected, not because it was suspected that they were forged or falsified, nor for any disqualification in the voter, but because he had made some blunder in the forms of filling in, or had signed in the presence of a Justice of the wrong Commission. This last was a point continually recurring. The geographical limits of Magistrates' jurisdiction are highly complex, and the Cambridge election has at least had the merit of supplying a want in the system of University education, and impressing upon a good many persons a variety of recondite facts in English geography.

Opinions have differed as to the policy of a convention. The more ardent spirits have regretted that they should be fettered in their fault-finding. The ordinary mind is scandalised by the sense of needless waste in the rejection of so many votes upon such grounds. But there is general agreement on the unsatisfactoriness of any partial convention. Such a convention is certain to omit defects as purely technical as any it includes. Each side complains that their opponents are not acting in the spirit of the agreement, and its terms are construed differently before the different Returning Officers.

At the late election, the courtesy, fairness, and good sense of the Vice-Chancellor were beyond praise, but the method of arguing disputed points was highly unsatisfactory. At any future election under the present Act there are two practicable alternatives. It might well be agreed that neither side should take any objections at all. They could safely leave to the Returning Officers the rejection of accidentally tendered votes of persons not on the Register. Failing this, the Vice-Chancellor should provide himself with a Legal Assessor, before whom all the questions that arise should be argued out on the simple footing of the Act, unhampered by conventions. A set of fixed rules would thus be soon obtained.

The uncertainty of the present method is so great that if the voting had been close in the late election the result would have been a matter of chance, and might have depended on the question which Returning Officer took charge of each polling place. In case of scrutiny the numbers might have differed widely from those given by the Vice-Chancellor, according to the strictness of the view taken by the scrutineers on such points as those above mentioned.

The cumbrousness of the present system further appears in the slowness with which votes can be recorded.

At the late election the polling of 4,000 votes occupied nearly the whole of five days of seven hours. A slight increase in the number of voters would make it impossible to hand in at the three statutory voting places all the papers within five days, the statutory limit for the duration of the poll. The person presenting a voting paper is required by statute, besides signing his name to a declaration that he believes it to be the voting paper of the person whose name is on it, to read aloud the whole form and declaration. This feat it is impossible to perform in much less than a minute, and with incidental delays and discussions the ordinary rate of progress at each polling place was 40 to 50 votes an hour.

A further difficulty and source of expense at Oxford and Cambridge is the absence of any Register containing the addresses of members of Convocation or Senate, or conclusive of their right to vote. The addresses can only be obtained from private knowledge or researches, or by applying to the various Colleges for leave to see the lists kept by them for their own purposes. This makes the process of sending round circulars difficult and imperfect, and increases the amount of advertising necessary.

The absence of any published Register, conclusive of the right of voting for the time being, further increases the trouble of elections. Instead of waiting till a fixed time to

be put on the Register, each person becomes entitled to vote the moment he becomes qualified. An accurate list of the voters at either of the two ancient Universities can only be obtained by correcting up to date from the Registrary's book, the list printed yearly. The more recently enfranchised Universities are compelled by Statute to publish yearly a list of voters and their addresses. Oxford and Cambridge are free to act as they please. At Cambridge a Register of the Senate is published yearly, but it does not contain the addresses, nor the full Christian names. Some part of the very large fees received by the Universities for the M.A. degree ought to be devoted to the expense of forming and printing a proper Register, and that Register ought to be conclusive throughout the year.

All these difficulties of procedure appear to have been satisfactorily met by the Scotch Universities in their Act of 1881. With a few amendments, and the necessary changes of form, the English Universities might safely follow in its lines. At those Universities a registration fee of £1 is paid by each person who takes a degree. This fee entitles the voter to have his name on the Register for life. It is intended to be sufficient to defray the expense of the Register of names and addresses which is yearly published, and is conclusive for the year of the right of voting.

The mode of voting, too, is made simple. An official voting-paper, with the name of the person who is to use it filled in, is sent to each elector at his registered address. No one can vote in person, or otherwise than by an official voting-paper.

All that the voter has to do is to fill in the name of the candidate voted for, and sign the paper in the presence of a witness. He then returns the paper by post to the Registrar. The votes are then examined and counted in private by the officials, in presence of the candidates or their agents.

On the expediency of improvements in procedure, opinion at Cambridge seems unanimous. Probably all parties would be content to accept the precedent of the Scotch Act, and if procedure only were in question, a measure on those lines could no doubt be passed into law without difficulty.

But no such proposal could be discussed without considering the expediency of substantial changes in the composition of the University constituencies.

The defects of the existing system are so grave that it would be useless to bring forward a measure intended merely to make less cumbrous the procedure at elections. Such a measure would naturally be opposed as useless by those who wish to deprive the Universities of direct representation. It would fail to find support among many of those who strongly desire that the Universities may continue to send members to Parliament. They would feel that any mere improvement of machinery, such as all parties would be agreed upon, was wholly insufficient, and might indefinitely postpone an adequate treatment of the problem.

The point to which most objection is taken is the extent of the present franchise. This may be attacked either as being too narrow or too wide. Reasons may be given either for its extension or its contraction; in its present condition it is eminently illogical and unsatisfactory.

There are two grounds on which the representation of Universities may be defended. Members are given to them either to bring before Parliament the special and local interests of the Universities, or for the general benefit of the country, to protect in the Legislature what Blackstone calls the rights of the Republic of Letters, and to give special representation to intelligence as embodied in those who have had the benefit of a University education. The present system ensures neither of these ends. It is the

standing complaint in all University elections that the real resident University is devoid of all power, and that the constituency is an altogether unacademic body, united for this purpose only from all parts of England, ignorant of the present state and special needs of the University, overwhelming and drowning the true academic voice.

But, on the other hand, an opposite objection may equally be taken. At these very Universities the franchise does not extend to nearly the whole body of those who have received a University education, or even of those who have taken a University Degree. There is, in addition, a heavy pecuniary qualification. The Bachelor's Degree is now the only one of those commonly taken for which there is a qualification of residence or test of examination. Every Bachelor is at any time after he has attained three years' seniority entitled, as a matter of course, to his Master's degree upon payment of fees amounting at Oxford and Cambridge to about £20, and at Dublin to about £10. No one of a lower degree than M.A. can be a member of the Senate or of Convocation, and no M.A. can vote there unless he keeps his name upon the books of the University. This at Oxford and Cambridge involves the payment of or composition for further dues of about £1 a year. At Dublin there is no such necessity for annual payments, and the franchise, besides being cheaper, appears to be somewhat wider, as it includes all persons who have obtained a Scholarship.

The result of these restrictions at Cambridge may be seen by the following figures, which are those of a sample year. In 1873-4 there were 668 matriculations, and in the year corresponding to that 493 persons took a Bachelor's degree. In the year in which these Bachelors would, in regular course, proceed to M.A., there were 336 Masters' degrees conferred, and of the Masters of Arts of that year there are

now 195 on the University register as members of the Senate.*

From these figures it appears that at Cambridge little more than two-sevenths of those who enter the University, and less than two-fifths of those who go through the complete career of education, become entitled to vote for members for the University. Neither does it follow that these two-fifths consist of those best qualified to speak in the name of the University. All residents naturally take their Master's degree, and all Fellows of Colleges proceed to M.A. of necessity; but amongst other non-residents the superior degree does not usually imply superior academic fitness.

Partly the question is one of wealth; but the proportion would be found to vary largely n the different professions. In some professions it is worth while to pay £20 for the right to use for life a silk hood and the dignified letters M.A., while in others the University degree is never apparent.

This state of things is clearly unsatisfactory, but there are several possible and opposing views of the desirable reform. All kinds of schemes are proposed for the separation of residents from non-residents. Non-residents are to be deprived of their vote for the University, receiving in compensation a qualification in the constituency in which they reside. Non-residents are to be limited to the election of one member, the other being chosen by residents. Non-residents electing two members as at present, residents are to receive an extra member, to be elected by themselves alone. Such schemes are vaguely supported by resident Liberals discontented with the present condition of things, but cannot be considered within the range of practical politics. Amongst the conflicting claims of vast unrepre-

* No doubt a certain number of these Bachelors will proceed to their M.A. in subsequent years, but as the figures given above include the corresponding stray Masters of former years, this point may be disregarded.

sented towns and districts, University residents cannot seriously expect to be granted an additional member. Neither is the world so convinced of the wisdom of Dons that it would be willing, even if the scheme were one which did not involve the demand for a third member, to elevate into a fresh constituency a body so very limited in numbers. No proposal can have a chance of acceptance which does not create an electorate whose numbers will bear comparison with those of the average borough or county constituency.

Mr. Freeman, in a recent article on University Elections,* agrees in setting down these schemes as impracticable, but he propounds a plan of his own to reduce the size of the constituency, and to bring it within more academical limits. He wishes to make a Master's degree a mark of real and considerable attainments beyond the standard necessary for a Bachelor. In this proposal he is, perhaps unconsciously, reverting to the arrangements of the time when the franchise was first conferred on the Universities and assumed by the Senate. At that time, the exercises and attendances which until recent days remained as useless survivals, existed in full vigour and reality. None but those who intended to devote themselves to learning and teaching proceeded to the higher degree. But such tests have been obsolete for centuries. Few first-rate men would care to submit themselves to be hall-marked by the University at a later age than that at which they now-a-days take their Bachelor's degree.

At any rate, the proposal is one of overwhelming magnitude if put forward for the mere purpose of obtaining a satisfactory University Electorate. In truth, Mr. Freeman seems intent on his scheme from an Academical rather than from an Electoral point of view, and to be taking the

* *Contemporary Review*, January, 1883.

opportunity to bring it forward in order to secure the support of an additional argument in favour of a scheme of University reform, in which he is aware that he would find very few sympathisers.

The fallacy of arguments for confining the franchise to a select and learned body is, that they very unduly underrate both the influence of an ordinary University education and also the popular estimate of that influence. They regard the ludicrously small modicum of knowledge necessary to obtain an ordinary degree as the complete result of three years at a University. But this is a very inadequate conception of the effects of his college career on the character of the average undergraduate. It is, moreover, wholly opposed to the popular view. University men are accepted as a special class, and little jealousy is felt of their special representation, but any suggestion of confining the franchise to persons of special learning would at once be met by a counter attempt wholly to disfranchise the Universities.

But there is another change which does not involve any such academic revolution as that proposed by Mr. Freeman, and which may be advocated without calling on the streams of academic progress to flow backwards. Granted that the franchise should not depend, as at present, upon an unreal and formal degree, it will be more practicable to extend it to all who possess the real and substantial qualification of a Bachelor's degree, than to limit it to those who satisfy some condition yet to be invented. Such an extension would increase the numbers of each constituency to a level with the larger boroughs, and would greatly strengthen the position of the Universities against objectors to their franchise. It would be in accordance with the principles of the recent College Statutes, which, in the governing bodies of the Colleges, have largely assimilated the position of Bachelor and M.A. Fellows.

It would also bring the franchise into conformity with that adopted at the more recently enfranchised Universities. At London, the Convocation, which is the electing body, includes all Bachelors of Law of two years standing, and Bachelors of Arts and Science of three years standing. In the Scotch Universities the title of Bachelor of Arts does not exist as a mere intermediate degree, and after due keeping of terms and passing of examinations, persons proceed at once to the Master's Degree, and the full rights of a graduate.

As to the political effect of the enfranchisement of Bachelors, it is not easy to speak positively beforehand. The general opinion is, that the addition to the constituency so made, would be more liberal than the present body of voters. Probably the proportion of those who take their Master's degree and keep their names on the books, is much largest among the clergy. The addition to the constituency would therefore mainly consist of men of other professions, and of these a larger proportion than of the clergy would be Liberals. The reasoning is conjectural, and would not be easy to verify by figures. But, however the fact might prove, it would probably be assumed by both sides in the argument, that the results of the change would be in favour of the Liberals. This, however, should be treated as beside the mark. The question is one of principle, and no mere "jerrymandering" considerations of party effect should be introduced to prejudice it.

As to the general effect of such a scheme upon the Universities, there is at least one much-needed reform to which the change would greatly conduce. Besides electing the Chancellor, the Members of Parliament, and other officers, and disposing of the patronage of University livings, the Senate or Convocation, as the sovereign body in the University, has all important University questions submitted to it as they arise. For this function the body is as much too

wide as for the election of Members of Parliament it is too narrow. Usually, of course, the decision of internal affairs is left to the votes of residents. But whenever there is any question that excites external feeling, the opinions of those who are well acquainted with the circumstances and needs of the time are liable to be swamped by the unconsidered votes of a random crowd of non-residents.

If the bounds of the Senate were extended, so as to include Bachelors of three years standing, few persons would be found to maintain that it was necessary to submit the ordinary business of the University to so large a body. It would therefore no longer be difficult to obtain the transfer of such matters to the body most capable of dealing with them; that is to say, to the electoral roll or general body of residents.

The main objection to the scheme seems to be the pecuniary loss which it would probably involve. Both the University and the colleges derive a considerable income from degree fees, which would be seriously affected by any diminution in the inducements to proceed to the higher degree.

It may be doubted whether, while parties are divided as at present, any one takes his Master's degree for the purpose of recording an unnecessary or a useless vote in a problematical contest. But it would probably be found that the right of voting, while not weighing much by itself, yet forms one element in the popular estimate of the degree, and that, with the extension of the franchise, the general opinion of the value of the higher degree would be lowered, and the income of the University consequently diminished.

Grave doubts might, indeed, be suggested upon the desirability of the University making an income by the sale of its degrees. But, without entering upon this question, it is clear that the loss, even if proved to be certain, would

not be an argument to which the Legislature should pay attention. For whatever reasons the right of returning members was given to the Universities, they certainly are not entitled to retain it as a source of income. The only way to defeat the proposal should be by showing that the quality of the constituency would not be thereby improved.

But, when the proper franchise has been satisfactorily settled, there remains a further question to be considered, and one of wider importance than in relation only to the Universities. At Oxford and Cambridge, Conservatives are in a great majority, while at London they are outnumbered by Liberals. Consequently, at Oxford and Cambridge, the opinions of Liberal electors are wholly unrepresented, and the Conservatives of London are in the same case. So long as each University is left to return independently its member or pair of members, the minority will necessarily remain without representatives. The question arises, whether it is wise or possible to attempt to remedy this and to give to each minority its share in representation, or whether we must be content to rely on the chance fact that the Conservatives of London and of the Scotch Universities fare as badly as the Liberals of Oxford and Cambridge. Hitherto this reply has been deemed sufficient, but, in view of the great changes which will shortly take place in our representative system, it is well to consider if it is not possible to attain a greater approach to justice. So long as the Universities stand alone and return members separately, this is impossible. If they are grouped together and return members jointly, various methods have been suggested by which the minority may secure their fair share of representation. Schemes of limited or cumulative voting have been tried elsewhere, but have achieved very partial success. The most logical and

satisfactory method is that which has been developed by Mr. Hare.* Since the principles of his scheme appear in so highly elaborated a form in his own writings, that his system is vaguely regarded by most people as a theory of incomprehensible complexity, it may be advisable to describe shortly how simply the scheme may be applied to a single group of constituencies, such as the English Universities. As far as theory goes, Dublin and the Scotch Universities might, if it were thought advisable, be included in the same group; but the elements of which they are composed appear too diverse to harmonise with the other Universities.

Oxford, Cambridge and London being grouped together, the events of a general election,† so far as they are peculiar to Hare's system, will be as follows. The three Universities being supposed, as at present, to return five members, each candidate will stand for one particular University, and, if elected, will be returned as member for that University. He can receive votes from supporters in any of the three Universities. The condition of being elected will be, not that he shall have received the most votes at his own University, but that he shall be among the five candidates who have received most votes from the three Universities.

Each voter will be able to vote for a candidate standing for any of the three Universities. He will only be able to vote for one candidate instead of, as at present, for two, or one, according to the University to which he happens to belong. But this apparent loss is outweighed by an increase

* The best exposition of the scheme with its subsequent improvements, is to be found in a paper by Mr. H. R. Droop, read before the Statistical Society in 1881, and published in their *Journal* for that year. See also a paper by the author in the *Westminster Review*, Jan., 1884.

† For bye elections, Hare proposes several alternative schemes. For such a body as the Universities, it would probably be best to proceed, *mutatis mutandis*, as at a general election.

in the effectiveness of his power of voting. He is not limited to the support of his favourite candidate, who may stand in no need of his vote, or may be in such a minority that votes bestowed on him are wasted. He may mark on his voting paper the order of his preference for as many of the candidates as he pleases. If the vote is used to return the candidate whose name stands first on the list, the subsequent names are wholly disregarded; but under certain circumstances the vote is transferred to the account of the candidate named second, and so on. The elaborateness of the scheme lies mainly in the rules governing this transference.

The manner of allotting the votes is as follows. The total number of votes given at the three Universities having been ascertained, any candidate whose name stands first on more than a sixth of these votes is necessarily elected; for it is obvious that there are not voting papers enough to place more than four other persons in the same position as himself. All votes, therefore, which a candidate receives above the necessary sixth are superfluous and unnecessary for his election. Such votes, instead of being wasted, will be transferred to the candidate named on them as the voter's second choice. Careful rules are laid down by Hare to determine in the most equitable manner possible, which votes are to be used to make up the requisite number, and which to be transferred. He uses first the papers which contain no alternative name, and therefore cannot be transferred; next, those given in the constituency for which the candidate is standing; and then those from the other constituencies in the group. Where no equitable principle of distinction can be discovered, some arbitrary fixed rule must be adopted. Hare's suggestion is that the voting papers should be numbered, and the votes delivered last should be those to be first used. A certain element of arbitrariness is obviously here introduced, but it will not be so

important as seems probable at first sight. Persons who have put the same name at the top of their paper will also be inclined to agree in their subsequent preferences. At any rate it is probable that they will select members of the same party. If this is so, any element of chance will affect the fortune of individual candidates, and not the due representation of parties. But, in truth, where the numbers to be dealt with are so large as they will be in a contested election, the doctrine of averages may be relied on with perfect safety to remove any such effects of accident. So long as wilful unfairness, on the part of the returning officer, is guarded against by fixed and verifiable rules of selection, it will be a matter of small importance what those rules may be. In fact, the result will so little depend upon the particular rules chosen that, if unfairness were not feared, these elaborate rules might well be omitted, and the order of the papers determined by simple chance.

There is also a slight inequality in value of votes which may be felt as a grievance by some electors. Two voters, A and B, support the same candidate. A's vote is used to return him, and thereby B's vote is left free to be applied in support of B's second choice. A may complain that his opinions are given less weight than those of B. But, on the other hand, A has the advantage of being a constituent of the man whose return he most desires. It would be considered unreasonable for an ardent Liberal to complain that, being an elector of Midlothian, his vote was valueless because Mr. Gladstone was sure of being elected for some other place, if not for Midlothian, and to express a desire to be represented by a member whom no other constituency would have returned. Such considerations reduce the grievance to very small dimensions. Further, it should be remembered that any inequalities and arbitrarinesses which may be found in the scheme ought to be measured, not only by an absolute scale, but by comparison with those which

are found in the present system. All surplus votes having been duly redistributed, it will probably be found that two or three candidates have received their sixth of the votes, and are in consequence elected, and that there are left half-a-dozen candidates with varying numbers of votes in their favour. It remains to determine which of these candidates are to fill the remaining vacancies. Various methods giving weight to secondary preferences have been proposed, but the following appears to be the fairest and simplest :—

The papers of the candidate who has received fewest votes are taken; his name is struck off them, and each is transferred to the account of the candidate whose name stands next upon it, and who is among the candidates not as yet elected or rejected. The same process is then gone through with the papers of the candidate who, after this distribution, has fewest votes, and so on until no more candidates are left than there remain vacancies to be filled up. These candidates so selected are then declared to be elected. This method appears to be that which best represents the true opinions of the constituency. But this is not its only advantage. An objection to schemes of minority representation, and to all schemes involving large constituencies, which has been lately stated by Mr. Forster, is that they throw power into the hands of wire-pullers and organisations. But this method destroys the power of wire-pullers to impose on their party a candidate unacceptable to the majority. The undue power of the "caucus" in this country, and still more in America, lies in the fact that a voter who does not vote as he is told necessarily wastes his vote or admits an opponent. The only alternatives open to a man who prefers some other person to the candidate put forward by the managers of his party are to swallow his objections or to create a schism which may ruin his party. But under the system proposed no one is reduced to this

dilemma, for rival candidates of similar opinions do not destroy each other's chance of success.

Suppose, for instance, it is clear that Oxford and Cambridge Liberals combined cannot return more than one member. Oxford Liberals wish, if possible, to be represented by an Oxford man, and Cambridge Liberals naturally have a corresponding desire. Both sets agree in desiring that some Liberal shall be elected, and that the representation shall not be exclusively Conservative. This being so, an Oxford and a Cambridge Liberal can both safely run. There is no occasion for a preliminary ballot or other arrangement to determine which of the two shall withdraw. The test ballot forms part of the election itself. Each Liberal voter sets first the name of the candidate he prefers, and next to it the name of the other Liberal candidate. If it is found that the Oxford candidate has more supporters than the Cambridge man, the votes of the latter are transferred to the former, and count in his favour as against any Conservative. Thus the election not only proves the relative strength of parties, but also displays the state of feeling inside each party, and ensures that the person whose return the votes of a party secure, is the person whose election is desired by the majority of that party.*

This advantage of his scheme is pointed out by Hare, but the difficulty which it removes has recently become prominent. Hare's main purpose was to ensure the exact proportionate representation of all minorities. With this view he grouped together the whole of England, so that any

* Another result of the method as described might be to enable the minority in a constituency, when unrepresented themselves, to choose between two candidates of the majority. In the Proportional Representation Bill, 1872, it was sought to obviate this by the provision that no elector should mark on his voting paper the names of a number of candidates greater than the number of vacancies to be filled. The important clauses of this Bill are to be found in the 4th Edition of Mr. Hare's Treatise, and in Mr. Noble's "Parliamentary Reformer's Manual."

English voter could vote for a candidate standing in any place in England or Wales. To this it was objected that by this plan too great power was given to crotcheteers if they were free to collect stray votes from any part of the country. To meet this and other objections, and to simplify the scheme, the Bill embodying the principles of the system, which was introduced by Mr. Morrison, Mr. Fawcett, and others, in 1872, divided England and Wales into 69 constituencies, returning from three to sixteen members, and confined the choice of a voter to candidates standing for his own constituency.

In this Bill the Universities, as in the above scheme, formed a group by themselves. By the similarity of their composition and interests, by their intimacy and mutual concern in each other's welfare, they are, of all constituencies, the most fit to be grouped together by a scheme which, while more closely connecting them, does not destroy their independence of action.

The manifold advantages promised by the scheme have been pointed out; but practical experiment only can test its success in working. The Universities are a most tempting subject for such an experiment. They form a small and wholly distinct group, and are composed of persons of special intelligence. To familiarise the country with the working of new methods of election, from whose success so much is to be gained, would give them no small claim to gratitude. Although the party which now forms the majority at Oxford and Cambridge would perhaps lose by the change, yet it is upon the adoption of methods by which the voice of the minority can be heard that most Conservatives base their hopes for the future.

At the present time, on the threshold of far-reaching and uncertain changes, it is necessary to consider the principles on which the new system of representation is to be based, and not only to be occupied in the details

of its extension. It is time that Conservatives should cease from vain outcries against the evils of the Caucus, while in the same breath they emphasize the necessity of organization. If their warnings are to have any effect, they must point out some possible method which, without losing the incalculable party advantages of organizations, may avoid the dangers which oppress their imaginations.

It is time that all who, while they accept as inevitable the coming extension of the franchise and re-distribution of power, yet desire an electoral system which shall ensure the due representation of minorities, should bestir themselves in controversy, and not suffer judgment in the pending question to go against them by default, and in particular it is time that those who desire the continued representation of the Universities should take the warning given them by such candid friends as the Attorney-General* and Mr. Goschen, and should realize that, in the discussions on the coming Reform Bill, they will be called on to justify their position, and to show cause why their exceptional privilege should be continued.

J. Parker Smith.

* After stating that the non-resident freeholder is in peril, he proceeds :—"I ought, in order to be more accurate, to say occupation franchise puts the representation of the Universities in great peril. If we deny to the non-resident freeholder a vote, and insist that every elector shall only have one vote—that where he resides—it will be asked: How can you give to the non-resident members of a University a second vote in addition to the residental vote? (Hear, hear.) Well, if that question be asked, I trust that some one will be found to give a satisfactory answer, but at present, I cannot suggest one."—Speech of Sir H. James at Bridgewater, *Times*, Jan. 11, 1883.